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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission

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In the Matter Of)
)
Federal-State Joint Board On)
Universal Service)
)
Recommendations for Phasing)
Down Interim Hold-Harmless Provision)

CC Docket No. 96-45 /

COMMENTS OF THE
TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

The Telecommunications Regulatory Board of Puerto Rico ("the Board"), by its attorneys, hereby submits its Comments on the Petition for Reconsideration ("Petition") filed on January 17, 2001 by the Puerto Rico Telephone Company, Inc. ("PRTC") in the above-captioned proceeding.

INTRODUCTION

The Board was established in 1996 by the Telecommunications Law of Puerto Rico, known as Law 213, for the purpose, among others, of ensuring "the availability of universal telecommunications services at affordable rates for all citizens of Puerto Rico."¹ The Board has regulatory authority over both the incumbent local exchange carrier, PRTC, and competitive local exchange carriers, and is tasked with assuring the protection of consumers.

In its Petition, PRTC asks for reconsideration of the Federal Communication Commission ("FCC" or "Commission") decision to phase-down "hold harmless" support for non-rural carriers.² In particular, PRTC believes that the one-dollar per year reductions in average monthly, per-line support should be postponed from January 1, 2001 to January 1, 2003. In addition, PRTC suggests that phase-down should be determined on a wire center, rather than a study area, basis. PRTC also suggests that it be clarified that the phase-down must occur on a competitively neutral basis so that it applies to incumbents and competitors alike.

¹ *Puerto Rico Telecommunications Act of 1996*, Statement of Motives, June 30, 1996.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Thirteenth Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-428, 65 Fed. Reg. 78990, December 18, 2000 ("Thirteenth Report and Order").

COMMENT

A. The Board Supports the FCC Phase-Down

The Commission's *Thirteenth Report and Order* in this proceeding attempted to strike an equitable balance between the need to establish universal support mechanisms that are "explicit, portable and competitively neutral"³ and the need to avoid undue rate disruptions. The Board, in its Comments on the Joint Board proposal, supported the phase-down of the per-line support beginning on January 1, 2001. We believed that the proposal was fair and sensitive to the needs of Puerto Rico.

Since filing those Comments, the Board has completed an extensive field study of universal service requirements in Puerto Rico. We have determined, for example, that overall telephone subscribership is even less than PRTC states in its Petition. That is, our studies have found telephone subscribership to be 74.5% rather than 79%. There is no question that Puerto Rico continues to need universal service support. Nevertheless, we do not believe it appropriate to delay the phase-down of hold harmless support for an additional two years.

The hold harmless provisions were always intended to be transitional, to avoid rate shock during the shift to universal service support based on a forward-looking economic cost mechanism.⁴ PRTC has challenged the validity of that mechanism and apparently believes that in a comprehensive review of the mechanism, its challenge will be successful. Therefore, a postponement of the phase-down protects PRTC's interest in continuing support at the higher level.

The Board does not oppose basing universal service support on forward-looking economic costs. Consequently, we see no reason for a postponement of the phase-down of support.

The Board does, however, share PRTC's concern about subscriber penetration levels. For this reason the Board has undertaken a consumer education program designed to acquaint citizens with existing universal service support programs, including Lifeline and Link-Up. During the field survey undertaken by the Board during the summer of 2000, it became clear that many citizens did not know that support mechanisms were available to them. The Board believes that increased

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 15 FCC Rcd 14714, 14715 (2000) ("Recommended Decision").

⁴ The Commission believes that use of forward-looking economic costs provides sufficient support without creating negative incentives. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report and Order*, 14 FCC Rcd 20432 (1999) *pets. for review pending sub nom. Qwest Corp. v. FCC*, 10th Cir. No. 99-9546 and consolidated cases.

consumer education efforts will significantly help to ameliorate any negative impact from the phase-down of hold harmless support.

In sum, the Board believes that use of a forward-looking mechanism for calculating universal service support is appropriate and sees no reason to postpone phase-down of hold harmless pending review of that mechanism. In addition, the Board is taking action to help ameliorate any impact phase-down may have on Puerto Rico consumers.

B. The Board Supports Hold Harmless Phase-Down on a Wire Center Basis

If the Commission does not postpone phase-down, then PRTC requests that the Commission recognize the fact that the current cascade approach for distributing support does not allocate support for certain end-user customers and allocates less than \$1.00 to other end-user customers.⁵ The amount of support targeted to specific end-user customers is based on the proxy model cost of each wire center. PRTC requests that the Commission recognize the interplay of its phase-down approach and its cascade approach for distribution. PRTC suggests that for public policy reasons the two mechanisms should be consistent and the Commission should modify the phase-down approach.

After investigating the hypothetical example given by PRTC and qualifying the impact on end-user customers who receive hold harmless support, the Board strongly supports PRTC's request and recommends that the Commission modify its phase-down mechanism to be consistent with its cascade distribution mechanism. This modification will ensure that end-user customers *receiving* targeted hold harmless support will realize no more than a \$1.00 per month reduction in this support throughout the phase-down period. The Board believes that a per customer support reduction in excess of \$1.00 per month would not be in harmony with the steps taken by the Commission to lessen the possible end-user effect of the phase-down.

PRTC has two study areas. The smaller study area ("Central study area") has 174,415 reported lines.⁶ Prior to the phase-down mechanism, the Central study area would receive \$23,958,462 annually in hold harmless support.⁷ This support averages \$11.45 per line per month.

⁵ PRTC requested in its reply comments to the *Recommended Decision* that the phase-down support process remain consistent with how hold harmless support is distributed using the Commission's cascade approach. (PRTC Reply Comment, August 28, 2000). In its Petition PRTC renews its concern about the anomaly that occurs in the first year within its larger study area and that will eventually occur within its smaller study area. (PRTC Petition for Reconsideration, January 17, 2001)

⁶ Reported lines as of December 31, 1999, PRTC submission to USAC.

⁷ Hold harmless support levels are based on third quarter 2000 amounts.

Each wire center in the Central study area receives in excess of \$8.32 per line per month in hold harmless support. The phase-down approach anomaly does not have any effect in the Central study area for the foreseeable future. This means that this study area will have a $174,415 \times 12 = \$2,092,980$ reduction in hold harmless support per year for at least eight years (assuming no changes in reported line or support totals).

PRTC's large study area has a total of 1,148,071 reported lines. Prior to phase-down, the large study area was scheduled to receive \$27,444,438 annually in targeted hold harmless support. However, because this support is targeted to specific wire centers based on proxy model costs, there are 10 wire centers with a total of 575,020 end-user customers that receive no hold harmless support. The Commission's current phase-down approach does not account for this targeted mechanism and requires a \$1.00 per line per month reduction for *all* reported lines, $1,148,071 \text{ lines} \times 12 \text{ months} = \$13,776,852$ per year (assuming no change in reported lines or hold harmless support). Approximately one-half of the reported lines in the large study area receive all hold harmless support for the study area. The effect of not having the phase-down approach consistent with the distribution method is that end-user customers in targeted wire centers will realize nearly a \$2.00 per line per month reduction in hold harmless support during the phase-down period. The Board considers a nearly 100 percent increase in the reasonable \$1.00 per line per month reduction adopted by the Commission to be unduly severe and has the potential for undue rate shock. Therefore the Board recommends that the Commission consider modifying its phase-down rule to apply only to those reported lines receiving hold harmless support. Moreover, wire centers that receive less than \$1.00 in pre-phase-down support should have their support reduction limited to the amount they receive. For example, if a wire center is targeted to receive \$0.61 per line per month prior to the annual phase-down mechanism, this wire center should only have a \$0.61 reduction per line per month.

The effect of this modification is to reduce the annual phase-down reduction for PRTC's large study area. (The effect on the Central study area would not be realized until a wire center receives less than \$1.00 per line per month.) The large study area would have a year-one reduction of \$5,762,528, or a reduction of \$0.84 per line per month.⁸ The reason why the average amount is less than \$1.00 is that there are four wire centers that receive less than \$1.00 in targeted support that lower the average per line per month amount. The Board believes that while this modification will extend the phase-down period for the large wire center, it will assure that no end-user customer will

⁸ The current annual phase-down amount for the large wire center is \$13,776,852.

realize a reduction of more than \$1.00 per line per month in hold harmless support. The Board believes this was the Commission's intent.

C. The Board Supports Competitive Neutrality

In its Petition, PRTC requests that the FCC clarify that phase-down applies to all carriers receiving high cost support, not merely the incumbent local exchange carrier. The Board agrees with PRTC, although we believe that competitive neutrality is implicit in the phase-down. Nevertheless, we also ask the FCC to clarify this matter to assure that the hold-harmless phase-down applies to all carriers providing service in a phase-down study area.



Veronica M. Ahern

NIXON PEABODY LLP
401 Ninth Street, NW – Suite 900
Washington, DC 20004
(202) 585-8321

Counsel to TELECOMMUNICATIONS
REGULATORY BOARD OF PUERTO RICO

Dated: January 29, 2001

CERTIFICATE OF SERVICE

I, Susanne G. Martin, hereby certify that on this 29th day of January, 2001, a copy of the foregoing Comments of the Telecommunications Regulatory Board of Puerto Rico was served by first-class U.S. mail, postage prepaid on the following, unless otherwise indicated:

*Ms. Sheryl Todd
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW – Room 5-B540
Washington, DC 20554
(3 copies)

Richard A. Askoff
Joe A. Douglas
80 South Jefferson Road
Whippany, NJ 07981
Counsel for National Exchange Carrier Assoc.

*International Transcription Service, Inc.
1231 20th Street, NW
Washington, DC 20037
(Hard copy and diskette)

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Avenue, NW
Washington, DC 20036
Counsel for National Rural Telecom Association

Joe D. Edge
Tina M. Pidgeon
Drinker Biddle & Reath LLP
1500 K Street – Suite 1100
Washington, DC 20005-1208
Counsel for Puerto Rico Telephone Company

Stuart Polikoff
Director, Government Relations
Organization for the Promotion and
Advancement of Small Telecom Companies
21 Dupont Circle, NW – Suite 700
Washington, DC 20036

Mark C. Rosenblum
Judy Sello
295 N. Maple Avenue – Rm 1135L2
Basking Ridge, NJ 07920
Counsel for AT&T Corp.

Steve Ellenbecker
Chairman
Wyoming Public Service Commission
Hansen Building – Suite 300
2515 Warren Avenue
Cheyenne, WY 82002

L. Marie Guillory
Daniel Mitchell
National Telephone Cooperative Association
4121 Wilson Boulevard – 10th Floor
Arlington, VA 22203-1801

George N. Barclay
Michael J. Ettner
1800 F Street, NW – Room 4002
Washington, DC 20405
Counsel for General Services Administration

Larry Fenster
WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Paul J. Feldman, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street – 11th Floor
Arlington, VA 22209
Counsel for Roseville Telephone Company

Glenn H. Brown
McLean & Brown
9011 East Cedar Waxwing Drive
Chandler, AZ 85248
Counsel for Roseville Telephone Company

Richard A. Beverly
1333 H Street, NW
7th Floor – East Tower
Washington, DC 20005
Counsel for DC Public Service Commission

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie L. Rones
1401 H Street, NW – Suite 600
Washington, DC 20005
Counsel for United States Telecom Association

Cynthia B. Miller
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Counsel for Florida Public Service Commission

Jay C. Keithley
Rikke K. Davis
401 9th Street, NW – Suite 400
Washington, DC 20004
Counsel for Sprint Corporation

Joseph DiBella
Michael E. Glover
Edward Shakin
1320 North Courthouse Rd – 8th Floor
Arlington, VA 22201
Counsel for Verizon

A handwritten signature in cursive script that reads "Susanne G. Martin". The signature is written in dark ink and is positioned above a horizontal line.

Susanne G. Martin

*Hand Delivery